



A&WMA

THE AIR AND WASTE MANAGEMENT ASSOCIATION NEWSLETTER
NORTHERN OHIO CHAPTER

Volume 18 Number 2

November 2005

Time to Fix BAT



By David W. Marczely, Ph.D., J.D.

The good news, BAT improves air quality; the bad news, it does it by moving industry out-of-state. While that may be an understatement, there is some truth in the bromide. Today's BAT is not what it used to be, and that is a bad thing.

BAT stands for Best Available Technology. BAT goes back to the 1970's when Ohio EPA used it as a gap filler, since there were not many rules controlling air emissions, as there are today. In those days, it allowed a permit writer to require controls that previously were, in the words of the law, demonstrated to operate satisfactorily on substantially similar air pollution sources. Overspray control and HVLP spray guns were routinely required for spray booths, even though no other rule specifically required these controls. When more expensive controls were considered, the applicant would conduct a cost-benefit analysis using a protocol similar to the one US EPA established for costing controls for PSD BAT, but with a cost per ton abated threshold for control much higher than for this federal program for major sources.

I haven't submitted an economic analysis for BAT in more than five years, although I suspect that they are done

occasionally. However, BAT swamps most permits, making many of the federally required control rules superfluous. BAT has morphed into a requirement to have a pound per hour requirement on every pollutant, even when no controls are required, and the environment is not the better for the effort.

How did this happen? First, Ohio EPA forgot that Ohio has an Administrative Procedure Act. APA requires a state agency to promulgate rules of general applicability by a notice and comment format, and to a review by a legislative committee (JCARR). The purpose of the APA is to invite comment and review so that the new rules are not arbitrary. The BAT rule is actually quite brief, stated in OAC 3745-31-05(A)(3) and defined in OAC 3745-31-01(P) in a mere 102 words. Ohio EPA never bothered to expand BAT by rule. Initially, Ohio EPA wrote some guidance documents to explain BAT. Only six Engineering Guides address BAT, the most recent in 1996. All are grossly out-of-date. Actually, the 1996 EG #66 was a good attempt to define where other rules were adequate and BAT was not required. The references in that guidance to today's rules do not match up and it is doubtful that Ohio EPA even follows it.

Ohio EPA also implements its Air Toxic Policy as BAT. Some years ago Ohio EPA proposed ATP as a rule, but withdrew it. Now, it merely applies ATP to virtually every permit, citing BAT as authority. US EPA claims that BAT is in the SIP, over Ohio EPA's initial claim to the contrary and Ohio EPA's final capitulation. The combination of these two moves means that the ATP is federally enforceable, even though there is no comparable requirement in the Clean Air Act and the ATP is virtually unique to Ohio. This is an

continued to page 2

Change is in the Air

Is it worth appealing an air permit issued to you by Ohio EPA? Do you even realize that you could? Are you aware that there are new alternatives to traditional minor air permits, that don't even require that you submit an application? If you are a Title V facility, are you aware that Ohio EPA has made some subtle changes that affect when you must and when you don't have to update your Starship application when you make changes at your facility? In some cases, but not all, you must get your Title V permit modified, not just obtain a PTI, in order to commence operation. And finally, are you aware that the regulated community feels that Ohio EPA is putting Ohio industry in an unfair position relative to industry in other states? Well, they always thought that, but now they are taking action. Find out what!

If you knew all that, then maybe you don't need to come to the NOC-AWMA's Fall Technical Conference, Change is in the Air, to be held Wednesday, November 9th, at the Lorain County Carlisle Reservation Visitors' Center. Come anyway, if only for the optional Raptor demonstration and nature walk after lunch.

Representatives of Ohio EPA and the Ohio Attorney General's office will enlighten you, while the Ohio Manufacturer Association and legal experts will give their perspective. It promises to be one of our best conferences. Don't miss it. Respond early, space is limited and no signups will be allowed at the door. If you have not received an announcement and registration by email, contact any member, whose contact information is listed elsewhere in this newsletter.

Time to Fix BAT

... continued

incentive to move your operation out-of-state.

However, the worst feature of BAT comes from Ohio EPA's penchant for BAT operational restrictions, as surrogates for emission limits. Ohio EPA claims that US EPA requires that permit limits be enforceable as a practical matter and that operational restrictions are easier to enforce. That may be true in a few cases, but it is certainly not true generally.

For example, Ohio EPA will typically set an hourly emission limit for a coating source based on the coating with the highest VOC content and operating at maximum application, even though neither condition rarely happens. Then, they assume 8760 hours of operation at this rate. This grossly exaggerates the Potential to Emit for the year, often by orders of magnitude, making major sources out of minor sources. The permittee counters by applying for a synthetic minor by setting the PTE below the major source threshold. If the permittee keeps records of the use of all of its coating, a very simple mass balance calculation, it is trivial to demonstrate compliance with the annual emission limit. However, Ohio EPA generally translates this emission limit into an annual coating limit, assuming the use of this worst coating at all times, or sets an annual hour limit, thus limiting operations, not emissions.

Where is the problem? Ohio has limited the business operation in two ways. First, Ohio EPA based the permit on the worst case for current operations, not the rule limit, allowed in other states. In a job shop, where the operations have to change rapidly to meet available demand, the company will have to turn away business that might require a slightly higher VOC content to meet more demanding specifications. Face it, the day of the production facility that has a set product line that it warehouses for sale is just about gone. That work easily goes to China. Today's business must react to demand and this method of permitting does not allow it. There are multiple solutions. For example, set a daily emission limit based on 24 hours. Then that product run can be achieved by not running 24 hours. The environment will not know the difference.

Secondly, skip the coating limit. Why not let the company comply with its emission limit by recordkeeping. Actually, Ohio EPA's method actually provides an incentive to pollute more. Under the recordkeeping alternative, the company can do more business by using lower-VOC coatings. Under the coating limit, there is no advantage to using a coating with fewer VOCs than the worst case. If the worst case is cheaper, and it often is, use it.

The above solutions are occasionally applied in permits today, when the permittee requests it, and the permit writer is willing to work for a solution that gives the company flexibility and does not harm the environment. Such solutions should be the rule, not the exception, as they are today.

What Ohio EPA has not done, and could under the current rule, is to give companies an incentive to permit at a level not just below the major threshold, but well below major threshold. There is no incentive to do that now, you get the same ten pages of terms and conditions either way. But provide more flexibility, without operational restriction, with only enough recordkeeping to demonstrate compliance with an actual "emission" limit, in exchange for a permit at 25% of major source threshold and watch the demand.

This is not to suggest that any particular solution is better than another. But if Ohio EPA wants to protect the environment by other than moving industry out-of-state, it should rethink its use of BAT. In the meantime, I suggest that permittees be creative in proposing their own terms and conditions. Negotiate terms that provide flexibility and benefit the environment. Some time ago, I applied for a permit for a natural gas generator with low-NOx burners and condenser control. The permit writer applied the standard STARS library condition for the condenser that called for 80% NOx control. I replied that I could comply, but the environment would not like it. I could pump more NOx to the condenser to make it more efficient. I suggested that I control NOx at the control device, even though the condenser would run inefficiently and not meet 80% control. Just give me an emission limit. She agreed and the environment and I thanked her.

Dave Marczyly is a Sr. Environmental Scientist at Floyd Browne Group in Akron. He can be reached at 330-375-1390 or dmarczely@floydbrowne.com.

Monitoring Site Tour September 27, 2005

On a beautiful fall day, about 20 attendees visited the George T. Craig ambient air monitoring site located on a triangular patch of land at the east end of the industrial flats of Cleveland. Marvin Rogers of the City of Cleveland Air Quality Division and his staff explained the operation of the PM10 and PM 2.5 air samplers as well as the Nitrogen Oxide air sampler located here. Atop the hut is the sampling inlets, and inside the temperature controlled hut are the electronics which include data loggers which are remotely accessible. The group then traveled to the offices of the Northern Ohio Area Coordinating Agency (NOACA) where Marvin conducted a presentation on the data and the trends followed by a presentation by Amy Wainright of NOACA as how the data is being used in order to forecast air quality and develop State Implementation Plan (SIP). For years we have looked at these data reports, it was great to be able to see exactly how the information is generated and applied.

Ohio EPA DAPC Rules Update

Ohio EPA has proposed revisions to several rules over the summer. Probably the one that effects the bulk of the regulated community the most are the changes to OAC 3745-31, permits to install. OAC 3745-31-03 now incorporates six new permit-by-rule provisions and modify several permanent exemptions. The rules are effective as of July 29, 2005 and are available for viewing at the Ohio EPA web site under regulations.

This rule is available for viewing at the Ohio EPA DAPC web site under regulations in the drop down box. This rule was adopted after considering comments submitted by interested parties during an extended draft language comment period which closed on October 13, 2004. Other rules up for review are OAC 3745-18, Sulfur dioxide, OAC 3745-19, Open burning, and OAC 3745-78, Air Pollution Fees. Please see the "What's new" section of the Ohio EPA DAPC web page www.epa.state.oh/dapc/ to view a synopsis on these rule changes.

Air Compliance Testing, Inc.

The highest quality emission test you can get.
Guaranteed.

PO Box 41156 • Cleveland, OH 44141 • 1-800-EPA-AIR1
(fax) 216-525-0901 • www.aircomp.com • awma@aircomp.com

TRI-STATE LABORATORIES, INC.

Over 20 Years Experience in Environmental Testing.

SBA 8(a) Certified

MBE/DBE: State of Ohio, ODOT, Penndot, Allegheny County,
PA Port Authority, and other agencies in northeast Ohio.

- Services: EPA compliance, drinking water, total coliform, e-coli, fecal coliform, NPDES compliance, waste, storm, and low-level mercury sampling and analyticals.
- Hazardous materials: underground storage, TCLP, Phase II and Phase III related environmental testing. Mold and asbestos.

2870 Salt Springs Road, Youngstown, OH 44509
Tel: 330-797-8844 • Fax: 330-797-3264
e-mail: trislabs@aol.com • web: www.tristatelabs.net



- Perform EPA Methods 1-29, 101, 202, 204 & 306
- ASTM Methods
- SW-846 Methods
- NIOSH Methods
- Metals
- Total Enclosure Verification
- Temporary Enclosure Construction
- CEM Monitoring (NO_x, CO, SO₂, VOC, O₂ & CO₂)
- RATA Testing
- Vost and Semi-Vost
- CEM Certification
- PM₁₀

P.O. Box 3750
Alliance, Ohio 44601
Phone: (330) 525-5119
Fax: (330) 525-7908
Toll Free: (800) 824-4274
e-mail: customstack@voyager.net
<http://customstackanalysis.com>

YOUR E-MAIL ADDRESS IS IMPORTANT TO US!
Send yours to rrperry@firstenergycorp.com

Message from the Chairman by Louise Barton Preaching to the Choir

Writing in a trade publication to encourage environmental professionals to be involved in trade organizations may seem like "preaching to the choir". But maybe it's not.

Maybe you read this newsletter ... or parts of this newsletter... and that's the extent of your involvement. Maybe you attend one event each year. You might attend a couple events, but have never attended a Planning Committee meeting. Then again, maybe you are in on everything at our Chapter level, but haven't yet made the commitment at the National level.

My point is that whether your level of involvement is simply reading this, or if it is looking forward to giving your presentation at the National Convention in New Orleans in 2006, there is more for you to do. And I'm sure you all realize that. Your calendar could easily become overloaded, your employer unhappy with

your focus away from work activities, and your budget in the red with all the fees and travel expenses.

Maybe a better point to address is not TO do more, but WHY do more.


If you are a young fresh face in the industry, starting your career, you can build a formidable knowledge base in the industry by taking part in as many events as you can. You will meet people who can and will help you advance your career. These networking contacts will also help when difficult issues come up that you can't handle alone. And believe me, there will be a few.

If you are mid-career, you are the most likely to have the full schedule that prohibits much extracurricular activity. But consider the cost of having technology or regulatory requirements pass you by. Keeping up to date is critical, especially on regulatory issues. It is also important to consider that unfortunately,

since many mid-career professionals have found their positions outsourced, downsized, or eliminated, it is critical to keep current and to maintain your network of contacts.

If you are coasting toward retirement, you may find that it is time to give something back to the up and comers. Presenting a workshop or session at a conference or working on the planning committee may fit your schedule at this point. Plus, networking has probably now turned more into socializing, and it's really nice to visit with your long time professional friends.

So maybe I am preaching to the choir. But it's a choir where not everyone is singing! If you're sitting there just tapping your toes, or clapping, or even humming along, I encourage you to break into song and become fully active in our organization.




Clean Air is Good Business

If you're considering investing in a project to comply with air quality regulations or eliminate pollution, the **Ohio Air Quality Development Authority** can help you save money.

We offer tax incentives to companies of all sizes and types.

To learn more, call 614-224-3383 or visit us at www.ohioairquality.org.



CLEAN AIR & CLEAN ENERGY
ARE GOOD BUSINESS

Calculate your savings online! Just click on the tax calculator link at www.ohioairquality.org.

ADVERTISEMENTS

The Northern Ohio Chapter of A&WMA would like to thank the following advertisers for their support. If your company is interested in supporting the Association through advertising, please contact Bob Perry at (330) 761-4485. Ads start at \$40/yr. for 2 issues.

Partnering with
our clients...

800.325.7647
www.floydbrowne.com



- Environmental Compliance and Management
- Brownfield Redevelopment
- Wetland Delineations and Stream Restoration
- Engineering, Landscape Architecture, Surveying

**Providing the Best
Total Solutions**

Place your ad here

100 West Erie Street
Painesville, OH 44077
440.354.9700 ■ 440.352.8373 Fax
Other Ohio Offices: Akron, Cincinnati, Cleveland, Columbus

burgessniple.com



BURGESS & NIPLE

Architecture ■ Environmental Services
Transportation ■ Utility Infrastructure
Land Development

AMERICAN ANALYTICAL LABORATORIES, INC.

“Service Is Our Science”

- OEPA-VAP Certified Brownfields Analyses
- Air Toxics • Stack Analyses • Industrial Hygiene
- Groundwater and Drinking Water Analyses
- NPDES and Stormwater Sampling and Analysis

AIR/INDUSTRIAL HYGIENE
AIHA ACCREDITED
1-800-837-2251

ENVIRONMENTAL ANALYSIS
OHIO EPA CERTIFIED
FAX (330)535-7246

(330)535-1300

<http://www.aal-inc.com>

email: AAL@raex.com



HB ENGINEERING, INC.

ENVIRONMENTAL CONSULTANTS
AND DESIGN ENGINEERS

We Bring Expertise to Work for You.

ENGINEERING AND EQUIPMENT DESIGN

- Fume Incinerators, Baghouses, Scrubbers
- Wastewater Treatment Plants
- Onsite Industrial Pretreatment Systems

ENVIRONMENTAL PROGRAMS

- Complete Facility Compliance Audits
- Air Permitting & Modeling
- NPDES & Storm Water Permitting
- Storm Water & Wastewater Sampling
- OSHA Safety Programs & Training
- Indoor Air Quality Monitoring
- Solid & Hazardous Waste Management
- Pollution Prevention Plan
- POTW Management

Nationwide Service 1-800-536-2040

9841 YORK ALPHA DR., UNIT D (440) 230-1500
NORTH ROYALTON, OH 44133-3514 FAX (440) 230-1050

ENVIRONMENTAL CONTROL LABORATORIES (EC Labs)

SBA 8(a) Certified

**MBE/DBE: State of Ohio, ODOT, Penndot, Allegheny County,
PA Port Authority, City of Cleveland, RTA, and other northeast Ohio agencies.**

NELAC certified by New York Department of Health.

- Services: NPDES compliance, waste, storm, and low-level mercury sampling and analyticals.
- Hazardous materials: underground storage, TCLP, Phase II and Phase III related environmental testing, asbestos.

38818 Taylor Street, North Ridgeville, OH 44039

Tel: 440-353-3700 • Fax: 440-353-3773

e-mail: eclabs@juno.com • web: www.tristatelabs.net



**AIR & WASTE MANAGEMENT
ASSOCIATION**

FROM THE EDITOR

The Northern Ohio Chapter Newsletter is published semiannually for members of A&WMA. Laura Lyden, newsletter editor, may be contacted at (330) 792-9999, lalyden@truenorth.org or TrueNorth Energy, 3711 LeHarps Rd., Youngstown, OH 44515. Membership dues include subscriptions to the newsletter. For membership information contact Cindy Ours through the chapter web page at www.nocawma.org.